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| 10/598,809      | 07/02/2007  | Hans Walter Haesslin | 70433               | 1604             |

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EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

07/01/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

# Office Action Summary

**Application No.**

10/598,809

**Applicant(s)**

HAESSLIN ET AL.

**Examiner**

KRISTIE L. BROOKS

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Status of Claims**

1. Claims 1-19 are pending.
  2. Receipt and consideration of Applicants remarks filed March 6, 2009 is acknowledged.
  3. Rejections not reiterated from the previous Office Action are hereby withdrawn.
- The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-19 are rejected under U.S.C. 103(a) as being unpatentable over Hopkinson et al. (US 2007/0225169).

Applicant claims a suspoemulsion formulation, free from polymeric stabilisers having a molecular weight of between 10,000 and 1,000,000 daltons, comprising: (i) a continuous phase, (ii) an HPPD-inhibiting herbicide insoluble in the continuous phase, (iii) a chloroacetamide, and (iv) one or more aromatic ethoxylate compounds or derivatives thereof.

#### **Determination of the scope and content of the prior art (MPEP 2141.01)**

Hopkinson et al. teach a suspoemulsion composition comprising 2-(2'-nitro-4'-methylsulphonylbenzoyl)-1,3-cyclohexanedione (mesotrione) (HPPD-inhibiting herbicide) having a particle size of less than 1 micron (see the abstract). One embodiment of the suspoemulsion formulation comprises a (a) continuous aqueous phase, (b) a dispersed emulsion phase comprising at least one liquid water-soluble active ingredient, and an emulsifier, and (c) mesotrione, as a dispersed solid phase that can be dispersed in the aqueous phase (see page 2 paragraphs 22-27). The liquid water-insoluble active ingredients include herbicides, such as acetamides (i.e. metolachlor), and antidotes or safeners (see page 2 paragraph 28-30). The formulations may also contain solid water-soluble active ingredients such as triazine herbicides or isoxaflutole (see page 3 paragraph 34). The formulations may contain anionic cationic

or non-ionic surfactants (see page 3 paragraph 39). Exemplary surfactants include polyarylphenol polyalkoxyether sulfates and phosphates (e.g. distyrylphenol polyethoxyether sulfate, etc.) (see page 3 paragraph 42). The formulation may contain stabilizing metal salts such as calcium, magnesium, iron or copper salts (see page 5 paragraph 62).

Hopkinson et al. also teach a method for controlling weeds in crops comprising applying the instant suspoemulsion composition to the desired area (e.g. seed, seedling, etc.) (see page 6 paragraph 65-66).

**Ascertainment of the difference between the prior art and the claims (MPEP  
2141.02)**

Hopkinson et al. do not exemplify a suspoemulsion with the instant components in claim 1.

**Finding of prima facie obviousness Rational and Motivation (MPEP 2142-  
2143)**

However, one of ordinary skill in the art would have been motivated to make a suspoemulsion with the instant components because Hopkinson et al. suggests the instant components are useful in making stable suspoemulsion formulations that are useful for controlling weeds.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make a suspoemulsion formulation with the instant components because the instant components provide stable suspoemulsion formulations, which will be beneficial to the user when applied to weeds.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the claimed invention.

### ***Response to Arguments***

Applicant's arguments filed March 6, 2009 have been fully considered but they are not persuasive.

Applicant argues that the instant invention requires the instant composition to be free of polymeric stabilizers, and Hopkinson et al. teach the use of polymeric stabilizers. Thus, Hopkinson et al. teach away from the instant invention.

This argument is not convincing. Hopkinson et al. is directed to a suspoemulsion that comprises the instant active ingredients (i.e. mesotrione and a chloroacetamide), the instantly claimed emulsifiers, and a dispersing agent (see page 1 paragraphs 0008-0015). These are the critical elements of the invention. Hopkinson et al. do teach that the composition may comprise other auxiliary agents such as chemical stabilizers, however, it is not a requirement. It is well within the means of one of skilled artisan to choose the appropriate auxiliaries for the formulation, dependent on the desired properties of the formulation. Furthermore, although the one example does disclose the use of a polymeric stabilizer, disclosed examples and preferred embodiments do not

constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971).

Therefore, Applicant's arguments of nonobviousness are not persuasive and the rejection is maintained.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616